(5)

No. 87-354

IN THE

Supreme Court of the United States

October Term, 1986

THE STATE OF ARIZONA,

Petitioner,

vs.

RONALD WILLIAM ROBERSON,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF OF THE STATE OF INDIANA AND THE COMMONWEALTHS AND STATES OF COLORADO, FLORIDA, IDAHO, KENTUCKY, MINNESOTA, MISSISSIPPI, MONTANA, NORTH CAROLINA, SOUTH DAKOTA, VIRGINIA, WEST VIRGINIA, WYOMING AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI

The State of Indiana, and the twelve other amici states and commonwealths, through their respective Attorneys General, offer this brief as amici curiae in support of the position argued

by Petitioner, the State of Arizona, through its Attorney General, in the above-captioned matter. The amici states and commonwealths, in the effort to promote the safety and welfare of their citizens, all enforce the criminal laws of their respective states and commonwealths. The investigation of violations of those criminal laws are a vital function of the governments of the amici states and commonwealths. The investigation of crimes committed within the jurisdiction of a state or commonwealth will invariably include the questioning of suspects, including those persons arrested or held in custody.

The questioning of suspects in custody is circumscribed by federal constitutional provisions, as well as by state constitutional provisions and rules. The interest of the amici states and commonwealths in the present case is the extension of federal constitutional provisions to the states in the questioning of an in-custody suspect who has invoked his Fifth Amendment right not to talk with police until he has an attorney, in the case for which he is in custody, to questioning by law enforcement officers concerning an unrelated case. There is a disparity among the states and commonwealths in this country as to whether the rule fashioned in the United States Supreme Court case of *Edwards v. Arizona* is applicable to a situation such as is presented in the case at bar. It is the position of the amici states and commonwealths who have joined in this brief that the rule pronounced in *Edwards v. Arizona*, concerning the questioning of an in-custody suspect after he has invoked his right to counsel, is inapplicable to questioning of an in-custody suspect on an unrelated criminal case. Because of their criminal law enforcement duties, the amici states and commonwealths have a vital interest in the resolution of the present cause for an important investigative tool of law enforcement officers may be further eroded should the rule in *Edwards v. Arizona* be extended to encompass unrelated crimes, as has been held by the Arizona Supreme Court in the present case.

STATEMENT OF THE CASE

On April 16, 1985, Ronald William Roberson (hereinafter Respondent) was arrested for a burglary which formed the basis for the charge in case CR-15268. Respondent was advised of his rights by Officer Perez and Respondent requested an attorney. Officer Perez did not then question Respondent. However, a few minutes later Officer Garrison, who did not know that Respondent had requested an attorney, approached Respondent. Respondent did give a statement to Officer Garrison. This statement, however, was suppressed at trial in cause CR-15268.

The present case involves a burglary charge in cause CR-16041. The investigation of this burglary, which occurred on April 15, 1985, was handled by Detective Jerry Cota-Robles. On April 18, 1985, Detective Cota-Robles called another department of the Tucson Police Department concerning a suspect vehicle in his case and learned that a subject had recently been arrested in that car for another burglary (the CR-15268 case). On April 19, 1985, Detective Cota-Robles went with the investigating detectives from the other burglary to question Respondent about the burglary he was investigating. Detective Cota-Robles had no knowledge of any prior questioning of Respondent.

At the jail, Detective Cota-Robles informed Respondent of his rights twice, once before he turned on the tape recorder and once after the tape recorder was turned on. Respondent indicated his understanding of his rights and gave a full confession of the April 15 burglary. Respondent never requested an attorney.

At the trial on the April 15, 1985 burglary, cause CR-16041, the April 19 statement was suppressed by the trial court. Moreover, the trial court found as a matter of fact that there was no connection between the April 16 violation and the April 19 questioning. The trial court felt compelled to suppress the April 19 statement due to the holding of the Arizona Supreme Court in *State v. Routhier*. The Arizona Court of Appeals

agreed with the trial court and the Arizona Supreme Court denied review of the case.

SUMMARY OF THE ARGUMENT

The rule in *Edwards v. Arizona* should not be extended to include questioning on unrelated crimes. So long as the police questioning of the suspect on the unrelated crime is legitimate, the suspect is advised of his rights, and coercive activity is not used in the questioning, any statement concerning the unrelated crime should be admissible at the trial of that unrelated crime. Extension of the *Edwards v. Arizona* rule to questioning on unrelated crimes would severely cripple the public interest in investigating criminal activity without serving a rational constitutional objective.

ARGUMENT

THE RULE OF *EDWARDS V. ARIZONA* THAT POLICE OFFICERS MAY NOT INITIATE INTERROGATION OF AN IN-CUSTODY SUSPECT IS INAPPLICABLE TO A CASE WHERE THE SUSPECT, HAVING INVOKED HIS RIGHTS IN REGARD TO A CRIME THEN UNDER INVESTIGATION, LATER CONSENTS TO QUESTIONING ABOUT AN UNRELATED CRIME BY OTHER OFFICERS WHO HAVE FULLY ADVISED THE SUSPECT OF HIS RIGHTS

It is, of course, well settled that before an in-custody suspect may be questioned by law enforcement officers he must first be advised of his rights, including his right against self-incrimination and his right to counsel. *Miranda v. Arizona*, 384 U.S. 436 (1966). Furthermore, when a suspect invokes his rights under *Miranda* and requests an attorney it has been held that the suspect is not subject to further police interrogation until counsel has been made available to him, unless the suspect himself initiates further communication or conversations with the police. *Edwards v. Arizona*, 451 U.S. 477 (1981). Both

Miranda and *Edwards* were "prophylactic rules designed to insulate the exercise of Fifth Amendment rights from the governments 'compulsion, subtle or otherwise,' that 'operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.'" (citations omitted). *Connecticut v. Barrett*, ____ U.S. ____, 107 S.Ct. 828, at 832 (1987). However, it has also been observed by the Court that caution should be used in further expanding currently applicable exclusionary rules and in erecting further barriers to presenting truthful and probative evidence to state court juries. *Colorado v. Connelly*, ____ U.S. ____, 107 S.Ct. 515, 521-522 (1986).

In *State v. Routhier*, 137 Ariz. 90, 669 P.2d 68, U.S. *cert. den.* 464 U.S. 1073 (1983), the Arizona Supreme Court held that the rule of *Edwards v. Arizona* was equally applicable to the situation where an accused is subsequently questioned by police on an unrelated case after having requested counsel on the case for which he is in custody. The amici states and commonwealths believe this to be an unwarranted expansion of the prophylactic rule of *Edwards v. Arizona* and a further barrier to providing state court juries with truthful and probative evidence.

The amici states and commonwealths recognize that the courts in some states have extended the rule of *Edwards v. Arizona* to include questioning on unrelated offenses. *See People v. Hammock*, 121 Ill. App. 3d 874, 460 N.E.2d 378, U.S. *cert. den.* 470 U.S. 1003 (1984); *Offutt v. State*, 56 Md. App. 147, 467 A.2d 194 (1983). Several jurisdictions, however, have refused to extend the *Edwards v. Arizona* rule to questioning by police on unrelated crimes, particularly when the officers doing the questioning on the unrelated crimes were ignorant of the previous assertion of the right to counsel. *See Lofton v. State*, Fla. App., 471 So.2d 665 (1985); *State v. Willie*, La., 410 So.2d 1019 (1982); *State v. Salgado*, La. App., 473 So.2d 84 (1985); *State v. Harriman*, La. App., 434 So.2d 551, U.S. *cert. den.* 106 S.Ct. 1958 (1983); *State v. Porter*, 210 N.J. Super. 383, 510 A.2d 49 (1986); *State v. Dampier*, 314 N.C. 292, 333 S.E.2d 230 (1985); *State v. Sparklin*, 296 Or. 85, 672 P.2d 1182 (1983);

State v. Newton, Utah, 682 P.2d 295 (1984); *McFadden v. Commonwealth*, 225 Va. 103, 300 S.E.2d 924 (1983); *State v. Cornethan*, 38 Wash. App. 231, 684 P.2d 1355 (1984).

As was previously observed, the purpose of *Miranda* and *Edwards* was to prevent police coercion so that only voluntary statements would be given by in-custody suspects. *See Connecticut v. Barrett*, *supra*, 832. Indeed, as has been stated by the Court: "The sole concern of the Fifth Amendment, on which *Miranda* was based, is governmental coercion." *Colorado v. Connelly*, *supra*, at 523. Thus, absent police coercion there is nothing on which to predicate a constitutional violation. *See Colorado v. Connelly*, *supra*, 522. Since exclusionary rules are designed to deter lawless conduct by the police, *Id.*, 523, where a statement has been obtained without police coercion there is no rational reason for excluding that statement from evidence at trial.

In the present case, Respondent was fully advised of his *Miranda* rights before he gave his statement. There is no evidence of police coercion. The only reason Respondent's statement has been excluded from evidence is because he had asked for counsel on another unrelated crime three days earlier. There was no coercive police activity. What lawless conduct by the police, therefore, is to be deterred by exclusion of Respondent's statement? Had the police made up other crimes, or used other crimes for which Respondent was not seriously a suspect, as a means to circumvent the request for counsel on the original charge, then, the police activity would have smacked of coercion. However, such are not the facts of the present case. Detective Cota-Robles was legitimately investigating a case wholly unrelated to the charge on which Respondent had invoked his right to counsel. Moreover, he fully advised Respondent of his rights. Further, he was unaware Respondent had requested counsel on the other case. Again, what coercive police activity is to be deterred in such a situation? *See State v. Harrison*, *supra*, 558.

Law enforcement agencies are charged with the duty of ferreting out criminals. Questioning of suspects is an indispensible tool in this endeavor. Extending the rule in *Edwards v. Arizona* to forbid legitimate non-coercive questioning on unrelated crimes would unduly frustrate the public's interest in the investigation of criminal activities. The Court has recognized this fact in the context of the Sixth Amendment. The Court has observed that the legitimate public interest in the investigation of crimes would be unnecessarily frustrated if courts were "to exclude evidence pertaining to charges as to which the Sixth Amendment right to counsel had not attached at the time the evidence was obtained, simply because other charges were pending at that time. . . ." *Maine v. Moulton*, 474 U.S. 159, 106 S.Ct. 477, at 489 (1985).

The distinction between invocation of the Fifth Amendment right as opposed to the Sixth Amendment right to counsel in interrogation cases has been severely diminished recently. *See Michigan v. Jackson*, ____ U.S. ____, 106 S.Ct. 1404 (1986). Therefore, it is not improper to consider the Sixth Amendment cases in the context of the *Edwards v. Arizona* rule.

The observation by the Court in *Maine v. Moulton*, *supra*, at 490, fn. 16, that: "Incriminating statements pertaining to other crimes, as to which the Sixth Amendment right has not yet attached, are, or course, admissible at a trial of those offenses", perhaps, foreshadows what the Court's decision should be in the case at bar. Just as invoking the Sixth Amendment right to counsel on one charge does not invoke that right for other charges. *Id.*, merely because a suspect has invoked his *Miranda* right to counsel on one offense should not be deemed to prevent police from subsequently initiating legitimate non-coercive questioning on another wholly unrelated offense, so long as the suspect is properly informed of his *Miranda* rights before such questioning begins.

Extending the rule in *Edwards v. Arizona* to unrelated crimes would severely frustrate police investigation of other criminal activity without serving a rational constitutional objective. In fact, it would totally thwart legitimate police

investigation of the unrelated crime. When the police obtain a statement on the unrelated crime, without coercion and only after having advised the suspect of his rights, to then say that the statement is inadmissible is to punish the police for competent and proper police work.

The prophylactic rule in *Edwards v. Arizona*, as previously noted, was intended to prevent the police from securing confessions by ignoring the invocation of Fifth Amendment rights. *Edwards* itself shows that the rule was designed to prevent that type of police abuse of rights that occurs whenever the police persist in questioning a suspect on a crime after he has repeatedly invoked his rights. The rationale for this prophylactic rule, however, does not extend to the situation of questioning on an entirely different offense. Questioning on an unrelated matter does not demonstrate that the police are ignoring the suspect's rights or abusing the invocation of the suspect's rights on the original case. The public has a legitimate interest in finding the truth. Questioning a person about an offense, when it is unrelated to that for which he is in custody and on which he has invoked his rights, is a vital aid to the public interest in solving crimes and it does not infringe upon the rights invoked by the individual for the offense on which he was originally in custody.

Miranda and *Edwards* were designed to prevent law enforcement officers from using the coercive nature of confinement to extract confessions that would not be given under unrestrained conditions. *See Arizona v. Mauro*, ___ U.S. ___, 107 S.Ct. 1391, 1936-1937 (1987). The facts in the case at bar do not implicate that purpose. Respondent, clearly, was not subjected to coercive police activity. His statement to Detective Cota-Robles was voluntary. So long as the police are legitimately investigating other crimes, properly advise the suspect of his *Miranda* rights, and do not engage in coercive behavior, there is no legitimate rationale for holding that a request for counsel on one criminal investigation prevents subsequent questioning on other unrelated criminal investigations. This is especially true where the officer or officers investigating the other unrelated offense do not know of the previous request for counsel.

CONCLUSION

For the above reasons, it is respectfully submitted that the position of Petitioner, State of Arizona, is correct and that the opinion of the Arizona court in the case be reversed.

Respectfully submitted,

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